

[Cite as *In re Thompson*, 2003-Ohio-1909.]

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
SENECA COUNTY**

IN THE MATTER OF:

CASE NUMBER 13-02-45

ROSALIND THOMPSON

O P I N I O N

AN UNRULY CHILD

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Juvenile Division.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: April 16, 2003.

ATTORNEYS:

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Father of Rosalind Thompson.**

SHAW, J.

{¶1} This is an appeal from the judgment of the Seneca County Juvenile Court which permitted Rosalind Marie Thompson (“Thompson”), while in the temporary custody of the Seneca County Department of Jobs and Family Services (“SCDFS”), to visit her maternal and paternal grandmothers.

{¶2} Thompson, a minor, suffers from several mental health problems which have led to several suicide attempts. Consequently, Thompson was administered treatment in the adolescent psychological unit at Toledo Hospital. While being treated, Thompson stabbed a staff member. As a result, on October 29, 2001, Thompson’s mother, Sherrie Tyburski (“Tyburski”), filed unruly charges against Thompson. On November 1, 2001, Thompson and Tyburski both

admitted to the allegations in the complaint. Thereafter, the trial court, *with the agreement of Tyburski*, ordered that Thompson be placed in the temporary care and custody of the SCDFS in a therapeutic foster home. In that order, the trial court listed several tasks for SCDFS to complete including, “The Seneca County Department of Job and Family Services shall establish a plan for visitation that shall be made part of the case plan.” Tyburski did not appeal this decision.

{¶3} On November 15, 2001, the trial court reviewed the temporary orders approving continued placement in therapeutic foster care and ordered visitation between Thompson and her mother and brother. On December 19, 2001, the trial court again reviewed the temporary orders and instructed that all visits with Thompson’s mother and brother be supervised and that Thompson spend Christmas vacation with her paternal grandmother. On March 5, 2002, the trial court again reviewed the temporary orders. At this hearing, the parties agreed that Thompson would not have any contact with maternal grandmother, that she would have scheduled visitation with Tyburski and Thompson’s siblings, and that Thompson would visit paternal grandmother on Easter weekend.

{¶4} On July 30, 2002, the trial court performed an incamera interview with Thompson and another review of Thompson’s case. In that interview, Thompson voiced her concern that the court was preventing her from visiting her grandparents. In its September 20, 2002 order, the trial court ordered visitation

between Thompson and her maternal and paternal grandmothers. However, because Tyburski was unable to attend the hearing for medical reasons, the trial court allowed Tyburski to file objections regarding the visitation. Tyburski filed objections and on October 29, 2002, the trial court held a hearing. After considering all of the evidence, the trial court ordered visitation between Thompson and both of her grandmothers.

{¶5} Tyburski now appeals asserting a single assignment of error

Assignment of Error

The court erred by granting the maternal and paternal grandparents visitation rights to the minor child over the objection of the biological mother.

{¶6} Tyburski argues that the trial court, pursuant to *Oliver v. Feldner* (2002), 149 Ohio App.3d 114 and similar authority, erred when it ordered visitation between Thompson and Thompson's maternal and paternal grandmothers over her objection. We disagree. The court in *Oliver* determined that the award of visitation to grandparents was an unconstitutional infringement on the mother's fundamental due process right to care for, have custody of, and control her child. However, *Oliver* involved R.C. 3109.11 and 3109.12 which governs grandparent visitation when the parent of a child is deceased or the child is born to an unmarried mother, not in a situation where a child is born to a married mother, both parents are alive and the child is in the temporary custody of

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a children services agency. Furthermore, R.C. 3109.11 and 3109.12 require the filing of a complaint seeking visitation, which is not the circumstance in this case.

{¶7} R.C. Chapter 2151 governs the care of a child in the temporary custody of a children services agency and R.C. Chapter 2151 shall be liberally construed so as “to provide for the care, protection, and mental and physical development of children subject to Chapter 2151 of the Revised Code.” R.C. 2151.01. Additionally, R.C. 2151.412 requires the children’s service agency to prepare and maintain a case plan on all children in its temporary custody and that “any party may propose a change to substantive part of the case plan, including but not limited to, the * * * visitation rights of any party.” However, if a party objects to the change in the case plan, the court shall hold a hearing at which the court will take any action that it determines to be necessary and in the best interest of the child. R.C. 2151.417. Furthermore, a trial court’s judgment in such a case will not be reversed absent an abuse of discretion. *In re Carroll* (Sept. 20, 1996) Green County App. No. 95-CA-62.

{¶8} Tyburski objected to Thompson visiting with her grandmothers and, consequently, the trial court held an evidentiary hearing. At the hearing, Tyburski testified that Thompson’s maternal grandmother reacted inappropriately to a situation regarding Thompson. Tyburski testified that Thompson had taken an excess of Thompson’s medications and also her mother’s medications before

school. As a result, the school called her maternal grandmother to pick her up from school but told maternal grandmother that she need not be concerned about the ingestion of the pills. Consequently, maternal grandmother did not seek any further medical assistance. Later that day, Thompson was hospitalized for ingesting the pills.

{¶9} Tyburski also objected to Thompson’s visitation with paternal grandmother as her paternal grandmother, knowing Thompson’s propensity for harming herself, purchased disposable razors for Thompson to shave her legs. Tyburski also testified that Thompson manipulates and deceives her paternal and maternal grandmothers. However, Tyburski also stated that other than the above mentioned incidents, both grandmothers “take good care” of Thompson. Additionally, Tyburski testified that Thompson had close relationships with her grandmothers prior to being placed in the temporary custody of SCDFS. Furthermore, Thompson’s foster family testified that Thompson’s manipulative behavior has lessened. Finally, the CASA guardian testified that Thompson has requested to visit with both of her grandmothers, that her grandmothers want to visit Thompson, and that it would be in Thompson’s best interest to have such visitation because Thompson was feeling isolated from her family.

{¶10} Based on the foregoing, we cannot find that the trial court abused its discretion when it found that visitation between Thompson’s maternal and paternal

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grandmothers and Thompson was in Thompson's best interest. Consequently, Tyburski's assignment of error is overruled and the judgment of the trial court is affirmed.

Judgment affirmed.

BRYANT, P.J., concurs.

Walters, J., dissents.

Walters, J., dissenting.

{¶11} I must respectfully dissent because the trial court is required to afford extreme deference to a fit parent's determination as to visitation, and that level of deference is not reflected in the record herein.

{¶12} In *Troxel v. Granville*, the United States Supreme Court concluded that "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." Resting on this principle, the Court held that in the absence of an allegation of parental unfitness, the presumption that fit custodial parents act in the best interests of their children must be applied, and the parents' determination of their child's best interests must be afforded special weight.¹ In *Santosky v. Kramer*, the United States Supreme Court had previously held that

¹ *Troxel v. Granville* (2000) 530 U.S. 57, 120 S.Ct. 2054, 2061-2062, 147 L.Ed.2d 49.

“[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.”²

{¶13} This case is not a situation where a parent has been found to be unfit. Instead, a presumably fit parent has sought the assistance of the State and voluntarily relinquished temporary custody of her child because the child “does not subject herself to the reasonable control of her parents.” I find it troubling that by this act, the parent would automatically forfeit care and management decisions to the court’s independent determination of the child’s best interests. To leap from a standard of extreme deference to a standard of child’s best interests without any deference appears to be inconsistent with these fundamental rights. While the unruliness provisions provide for commitment of the child to the temporary custody of the State, the overriding goal of this temporary commitment is the expeditious return of the child to her presumably fit parent. The majority’s approach may effectively discourage parents from seeking assistance for fear of losing all control over their child’s care and management. In the absence of a finding of parental unfitness, dependency, or neglect, I believe there must be a balance of State, parental and child interests, with special weight and deference afforded to the parent’s wishes. Therefore, I would find on the record before us

² *Santosky v. Kramer* (1982), 455 U.S. 745, 102 S.Ct. 1388, 1394-1395, 71 L.Ed.2d 599.

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that the trial court failed to afford that level of deference to a fit parent's determination as to visitation.